

Schedule 5

Schedule of Litigation Trust Claims

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Litigation Trust¹ Claims²

- Any and all claims identified and referenced in, or arising from the facts described in, the “Final Report of Jason R. Lilien, Examiner” filed November 3, 2018 [ECF No. 302] (the “Examiner Report”).
- Any and all claims arising from the reclassification of Debtor’s funds with the intent to hinder, delay and defraud creditors, including, but not limited to, among other things, fraudulent transfers pursuant to section 548 of the Bankruptcy Code, for violations of section 549 of the Bankruptcy Code, and for violations of the automatic stay.
- Any and all claims to recover unauthorized, improper and /or avoidable post-petition transfers made to or for the benefit of former CEO Brian Mullaney (“Mullaney”); CFO Hana Fuchs; Chief Programs Officer Delois Greenwood; Tom Dufek; Steve O’Donnell; and the recipients or beneficiaries of post-petition grants (identified in the Debtor’s Monthly Operating Reports).
- Any and all claims to recover avoidable pre-petition transfers, including preferential transfers, fraudulent conveyances, and fraudulent transfers made to or for the benefit of the recipients or beneficiaries identified in the Examiner Report and the Debtor’s Statement of Financial Affairs [ECF No. 77].
- Any and all claims against Mullaney arising from his excessive compensation and bonuses and excess benefits and improper reimbursement of expenses.
- Any and all claims against Debtor’s current and former directors and officers, professionals (including KPMG and Carter, Ledyard & Milburn LLP to the extent such claims have not been settled and released as of the Effective Date), and agents, including but not limited to, for breaches of their fiduciary duties, waste, gross negligence, ordinary negligence, fraud, negligent misrepresentation, unjust enrichment, conversion and malpractice occurring both pre-petition and post-petition including in respect of the matters described in the Examiner Report, this Schedule and in filings made by HMS during the bankruptcy case (including HMS’s Motion for Contempt and the Imposition of Sanctions against Debtor’s Counsel Carter Ledyard & Milburn LLP [ECF No. 404], HMS’s Response to Debtor’s Response to Order to Show Cause Dated September 25, 2017 [ECF No. 258], and

¹ Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Plan.

² The following is a non-exclusive schedule of potential causes of actions and claims to be preserved under the Plan and to be assigned to the Litigation Trust; provided, however, nothing herein shall not be deemed an admission, denial or waiver of any claims, demands, rights or causes of action that the Debtor, the Estate or the Litigation Trust may hold against any Person or Entity. Except as otherwise provided in the Plan, the Litigation Trust intends to preserve all claims, demands, rights or Causes of Action for the benefit of the Litigation Trust.

HMS's Statement in Response to the Court's October 31, 2017 Order to Show Cause [ECF No. 306]).

- Any and all other claims identified by the Litigation Trust including all Avoidance Actions, all D&O Claims and other Causes of Action.